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1793 L.C.

Atty. Dkt. No. 080542-0157

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Isao MOCHIDA et al.
Title: Heat-Treated Active Carbons for Use in
Denitration, Processes for Producing Same,
Denitration Method Using Same, and
Denitration System Using Same
Appl. No.: 10/081,208
Filing Date: 2/25/2002
Patent No.: 7,465,429
Grant Date: 12/16/2008
Examiner: Stuart L. HENDRICKSON
Art Unit: 1793
Conf. No.: 4498

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 12/16/2008 as U.S. Patent No. 7,465,429.

The Patent Office determined that the patent was entitled to 851 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1,141 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1,327 days
(b) Total Applicant delay:	186 days
Final PTA Determination:	1,141 days

Applicants therefore respectfully request that the patent be accorded 1,141 days PTA.

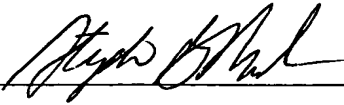
The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date JAN 05 2009

By 

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✓



Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 080542-0157
Application Number: 10/081208
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	02/25/2002	0		
	14 month From Application date	04/25/2003	424		
Edit Delete	Restriction Requirement	09/24/2004	942	518	
Edit Delete	Restriction Requirement Response Received at PTO	10/22/2004	970		
Edit Delete	Non-Final Office Action	01/11/2005	1,051		
	3 Year Period Starts	02/25/2005	1,096		
	Non-Final Office Action + 3 months	04/11/2005	1,141		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/06/2005	1,166		25
Edit Delete	Final Office Action	08/11/2005	1,263		
	Final Office Action + 3 months	11/11/2005	1,355		
Edit Delete	Request For Continued Examination	12/12/2005	1,386		31
Edit Delete	Request For Continued Examination	12/12/2005	1,386		
	3 Year Period Stopped	12/12/2005	1,386	290	
Edit Delete	Non-Final Office Action	02/28/2006	1,464		
	Non-Final Office Action + 3 months	05/28/2006	1,553		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/24/2006	1,641		88
Edit Delete	Final Office Action	10/24/2006	1,702		
Edit Delete	Final Office Action Response Received at PTO	01/23/2007	1,793		
	Final Office Action + 3 months	01/24/2007	1,794		
Edit Delete	Advisory Action	02/12/2007	1,813		
Edit Delete	Notice of Appeal Received at PTO	02/21/2007	1,822		28
Edit Delete	Appeal Brief Received at PTO (Insufficient)	04/18/2007	1,878		
Edit Delete	Notice of Non-Compliance	06/11/2007	1,932		
Edit Delete	Appeal Brief Received at PTO	06/13/2007	1,934		
Edit Delete	Examiner's Answer Mailed	09/07/2007	2,020		
Edit Delete	Reply Brief Received at PTO	11/07/2007	2,081		

Edit Delete	Appeal Decided by Appeal Board; Some Rejections Reversed	07/23/2008	2,340	519	
Edit Delete	Notice of Allowance	08/15/2008	2,363		
Edit Delete	Post-Allowance Document Received at PTO	09/12/2008	2,391		
Edit Delete	Supplemental Notice of Allowability	09/25/2008	2,404	14	
Edit Delete	Issue Fee Paid	11/14/2008	2,454		
Edit Delete	Patent Grant Date	12/16/2008	2,486		
			Totals:	1,327	186
			PTA:	1,141	

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Version: 3.02.04

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IP: 10.14.42.130

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